

J. Greg Coulter (State Bar No. 016890)
Allan S. Rubin (Pro Hac Vice)
JACKSON LEWIS P.C.
2111 East Highland Avenue
Suite B-250
Phoenix, AZ 85016
Telephone: (602) 714-7044
Facsimile: (602) 714-7045
Greg.Coulter@jacksonlewis.com
Allan.Rubin@jacksonlewis.com

John Doran (State Bar No. 012112)
Craig Morgan (State Bar No. 023373)
SHERMAN & HOWARD LLC
2555 E. Camelback Road, Suite 1050
Phoenix, AZ 85016
Telephone: (602) 240-3000
jdoran@shermanhoward.com
cmorgan@shermanhoward.com
Attorneys for Defendant, Rocket
Mortgage, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Rachael Gilburd, an Arizona Resident; **Andrew Gebhart**, an Arizona Resident; **Daniel Featherstone**, an Arizona Resident; **Derek Martin**, an Arizona Resident; **Angela McGuire**, an Arizona Resident; **Kori Morin**, an Arizona Resident, **Katherine Redas**, an Arizona Resident, **Erin Salava**, an Arizona Resident; **David Vallejo**, a Michigan Resident; and **Nick Vincent**, an Arizona Resident, Individually and on Behalf of All Others Similarly Situated.

Case No: 2:23-cv-00010-DLR

**RULE 12(B)(2) MOTION TO
DISMISS OR TRANSFER
PLAINTIFFS' FIRST AMENDED
COLLECTIVE ACTION
COMPLAINT**

Plaintiffs.

19

Rocket Mortgage, LLC, a Michigan limited liability company,

Defendant.

INTRODUCTION

Rocket Mortgage, LLC (“Rocket Mortgage”) moves to dismiss Plaintiffs’ collective allegations as to non-Arizona putative collective members under Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction. Alternatively, Rocket Mortgage moves to transfer this matter under 28 U.S.C. § 1631 and/or 29 U.S.C. §1404 to the Eastern District of Michigan.

This is a putative collective action brought under Section 216(b) of the Fair Labor Standards Act, 29 U.S.C. §201 et seq. (“FLSA”). Plaintiffs purport to assert claims on behalf of “[a]ll persons who work[ed] for Defendant Rocket Mortgage, LLC … as a mortgage banker or similar title …” (ECF 26, Am. Compl. ¶80.) Rocket Mortgage, however, is a Michigan company with its principal place of business in Detroit. Rocket Mortgage is not “at home” in Arizona and none of the conduct arises out of Rocket Mortgage’s conduct in Arizona. Thus, Plaintiffs cannot establish that the FLSA collective claims of non-Arizona employees are connected to Arizona. Accordingly, this Court lacks both general and specific jurisdiction over non-Arizona collective members’ claims and the claims asserted on behalf of non-Arizona putative collective members should be dismissed.¹

Nonetheless, if this Court declines to dismiss the claims of non-Arizona putative collective members, it should transfer the case to the Eastern District of Michigan under §1631. Transfer under §1631 is proper because Michigan has both subject matter and personal jurisdiction over Rocket Mortgage, and transferring would save time and resources because Michigan unquestionably has the authority to hear the claims of the non-Arizona and Arizona opt-in plaintiffs. Transfer also decreases the risk of filing a

¹ This is not a hypothetical. As of February 27, of the 69 Plaintiffs and opt-in Plaintiffs who had filed consents as of that date, 32 worked for Rocket Mortgage outside of Arizona, including 10 in Michigan, 12 in Ohio, three in Illinois, two in New York, and one in each of the following states: California, Florida, Idaho, Texas, and Wyoming. See Exhibit A, Decl. of A. Niemiec, ¶¶16-20. And one of the named Plaintiffs is a Michigan resident and worked for Rocket Mortgage in Michigan. *Id.*, ¶18; ECF No. 26, Am. Compl., Caption (“David Vallejo, a Michigan Resident”).

1 series of nearly identical lawsuits around the country, exponentially increasing the costs
2 of litigation, and creating a high likelihood of piecemeal litigation and inconsistent
3 rulings.

Finally, if the court does not dismiss the claims of non-Arizona plaintiffs or transfer the case under §1631, it should transfer the case to the Eastern District of Michigan under §1404 because Michigan is a more convenient forum and the interests of justice favor transferring this case to Michigan. This is especially so where most putative collective members worked outside of Arizona, Arizona has no connection to the alleged development or implementation of the purported policies at issue, and Michigan is a more convenient venue.

FACTUAL BACKGROUND

Rocket Mortgage is a Mortgage Company. (ECF 26, Am. Compl. ¶25.) Its “home state” is Michigan, the state where it is both organized and where it maintains its principal place of business. (See Decl. of A. Neimiec, attached as Ex. A.) Plaintiffs are mortgage bankers formerly employed by Rocket Mortgage. (ECF 26, Am. Compl. ¶¶1, 11, 12, 26-38.) Plaintiffs claim to be salary employees who routinely worked more than 40 hours per week. (*Id.*, ¶¶ 39, 44.) According to Plaintiffs, Rocket Mortgage “failed to properly compensate Plaintiffs for all of their overtime hours worked” and improperly calculated Plaintiffs’ regular rate of pay by failing to “properly incorporate the incentives, bonuses, and additional compensation paid to Plaintiffs in each pay period as part of the determination of their regular rate of pay.” (*Id.*, ¶¶69-72.)

22 Plaintiffs seek to pursue claims on behalf of a nationwide collective, defined as:

23 All persons who work[ed] for Defendant Rocket Mortgage,
24 LLC or its predecessor entities Quicken Loans, LLC and
25 Quicken Loans, Inc.; who work[ed] over 40 hours in any
26 given workweek as a past or present mortgage banker or
27 similar title, or who performed the job duties of working with
barrowers through loan processing (the “Collective
Members”).

(ECE No. 26, Am. Compl. ¶80.)

1 Rocket Mortgage employs more than 10,000 people. (Ex. A, ¶ 14.) Of these, only
 2 11.8% are in Arizona. *Id.* By contrast, Rocket Mortgage employs about 68% of its
 3 workforce in Michigan. *Id.* Of the mortgage bankers employed by Rocket Mortgage,
 4 about 17.4% are in Arizona. (*Id.*, ¶15.) Yet, 56% of the mortgage bankers are in
 5 Michigan. *Id.* The remaining mortgage bankers are employed in other states. *Id.* Thus
 6 about 82.6% of mortgage bankers employed by Rocket Mortgage reside outside the state
 7 of Arizona. *Id.* All of Rocket Mortgage's employment and payroll policies were
 8 developed in Michigan. (*Id.*, ¶13.) All human resources and payroll activities are
 9 directed from Rocket Mortgage's headquarters in Detroit. (*Id.*, ¶¶7-10,13.) Moreover, all
 10 of Rocket Mortgage's business records are in Detroit, as are all the employees who
 11 developed and implemented its payroll practices. (*Id.*, ¶¶11-12.) None of Rocket
 12 Mortgage's payroll or other employment records related to non-Arizona putative
 13 collective members are in Arizona. (*Id.* ¶¶11-13.)

14 **I. THE COURT SHOULD DISMISS PLAINTIFFS' NATIONWIDE
 15 COLLECTIVE ALLEGATIONS FOR WANT OF PERSONAL
 16 JURISDICTION UNDER RULE 12(b)(2)**

17 Plaintiffs seek to pursue claims on behalf of a nationwide collective. But under
 18 Fed. R. Civ. P. 12(b)(2), the claims asserted on behalf of non-Arizona collective
 19 members should be dismissed for lack of personal jurisdiction. Rocket Mortgage is a
 20 Michigan company whose principal place of business is in Detroit. (Ex. A, ¶¶4-5, 7.)
 21 Thus, Michigan—not Arizona—is Rocket Mortgage's home state. Because Plaintiffs
 22 seek to pursue a nationwide collective action outside Rocket Mortgage's home state, the
 23 claims of non-Arizona residents should be dismissed.

24 ***A. Standard of Review.***

25 Plaintiff must make a *prima facie* showing that personal jurisdiction exists. *Love*
 26 *v. Associated Newspapers, Ltd.*, 611 F.3d 601, 608 (9th Cir. 2010). To do so,
 27 “plaintiff need only demonstrate facts that if true would support jurisdiction over the
 28 defendant.” *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). In determining
 whether Plaintiffs have met their burden, the Court may consider the pleadings, as well

1 as any affidavits or exhibits submitted by the parties. *Doe v. Unocal Corp.*, 248 F.3d
 2 915, 922 (9th Cir. 2001).

3 Once a defendant raises the lack of personal jurisdiction, plaintiff has the burden
 4 of demonstrating that personal jurisdiction exists. *Menken v. Emm*, 503 F.3d 1050, 1056
 5 (9th Cir. 2007). To establish personal jurisdiction over a defendant, a plaintiff must
 6 show: (1) that the longarm statute of the forum state confers personal jurisdiction over an
 7 out-of-state defendant, and (2) that the exercise of jurisdiction is consistent with federal
 8 due process requirements. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154-55 (9th Cir.
 9 2006); *Chan v. Soc'y Expeditions*, 39 F.3d 1398, 1404-05 (9th Cir. 1994); Fed. R. Civ.
 10 P. 4(K).

11 The due process inquiry involves two recognized categories of personal
 12 jurisdiction: general jurisdiction (or “all-purpose” jurisdiction) and specific jurisdiction
 13 (or “case-linked” jurisdiction). *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct.
 14 1773, 1779-80 (2017). A court with general jurisdiction may hear any claim against that
 15 defendant, even if all the incidents underlying the claim occurred in a different State. *Id.*;
 16 *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).
 17 Specific jurisdiction, on the other hand, exists when the suit “arise[es] out of or relate[s]
 18 to the defendant’s contacts with the forum.” *Bristol-Myers*, 137 S. Ct. at 1776.
 19 “[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected
 20 with, the very controversy that establishes jurisdiction.” *Id.* at 1780.

21 **B. Rocket Mortgage is Not Subject to General Jurisdiction in Arizona.**

22 The Supreme Court has narrowed the scope of general jurisdiction by clarifying
 23 that there are only a limited set of contacts with a forum that will render a defendant
 24 subject to general jurisdiction in that forum. *Daimler AG v. Bauman*, 571 U.S. 117, 137
 25 (2014). A corporation’s contacts with the forum state must be so continuous and
 26 systemic as to render it essentially “at home” in that state. *Id.* The Supreme Court
 27 explained that, generally, a corporate entity is at home in its place of incorporation and
 28 principal place of business. *Daimler*, 571 U.S. at 137. Merely engaging “in a

1 substantial, continuous, and systematic course of business” in a particular jurisdiction is
 2 insufficient to permit the exercise of general personal jurisdiction there. *Id.* at 137-38.

3 While a corporation’s operations in another forum may be “so substantial and of
 4 such a nature as to render the corporation at home in that State,” that is true only in the
 5 exceptional case. *See id.* at 139, n 19-20 (“A corporation that operates in many places
 6 can scarcely be deemed at home in all of them. Otherwise, ‘at home’ would be
 7 synonymous with ‘doing business’[.]”); *BNSF R v Tyrrell*, 137 S Ct 1549, 1559 (2017)
 8 (Montana courts lacked general jurisdiction over a company that was not incorporated in
 9 Montana, did not maintain its principal place of business in Montana, and – even though
 10 the company had more than 2,000 employees in Montana – it could not be considered
 11 “at home” in Montana); *Agher v. Envoy Air, Inc.*, CV-19-6753-R, 2018 U.S. Dist.
 12 LEXIS 223964, at *4-6 (C.D. Calif. Oct. 12, 2018) (American Airlines was not “at
 13 home” in California, and thus not subject to general personal jurisdiction despite
 14 allegations that 16% of American’s flights involved departures and arrivals in California
 15 and about 8,500 American employees were based in California); *White v. Steak N Shake*,
 16 No. 4:20 CV 323 CDP, 2020 U.S. Dist. LEXIS 61747, at *6 (E.D. Mo. Apr. 8, 2020)
 17 (“Steak N Shake’s continuous and systematic operation in Missouri of thirty-nine of its
 18 more than 400 national restaurants, with nothing more, make Steak N Shake essentially
 19 at home there.”).

20 Plaintiffs plead no facts that would render this matter the “exceptional” case
 21 where a foreign corporation may be found “at home” in another jurisdiction. As
 22 Plaintiffs acknowledge, Rocket Mortgage is a company *authorized* to do business in
 23 Arizona. (ECF 26, Am. Compl. ¶14; see also Ex. A, ¶6.) But Rocket Mortgage is not “at
 24 home” in Arizona. Instead, it is a Michigan limited liability company whose principal
 25 place of business is Detroit, Michigan. (Ex. A, ¶¶4-5, 7.) Because it is not “at home” in
 26 Arizona, general jurisdiction is not a basis for personal jurisdiction over Rocket
 27 Mortgage for any of Plaintiffs’ claims.

28

C. *Rocket Mortgage is Not Subject to Specific Jurisdiction for Conduct Outside of Arizona.*

Because this Court lacks general jurisdiction over Rocket Mortgage, the scope of Plaintiffs' claims that can proceed here is limited to Rocket Mortgage's alleged conduct in Arizona. This is because specific jurisdiction requires the suit to arise ““out of or relat[e] to the defendant’s contacts with the forum.”” *Bristol-Myers*, 137 S. Ct. at 1780 (alterations in original) (quoting *Daimler*, 571 U.S. at 127). For specific personal jurisdiction to exist, “there must be ‘an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.’” *Bristol-Myers*, 137 S. Ct. at 1780 (quoting *Goodyear*, 564 U. S., at 919). Without activity or occurrence taking place in or connecting the forum to the controversy, “specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” *Bristol-Myers*, 137 S. Ct. at 1781.

Plaintiffs plead a nationwide collective action. Yet Plaintiffs do not allege the claims of non-Arizona putative collective members arise out of or relate to Rocket Mortgage’s Arizona activities. Instead, Plaintiffs allege claims that arise out of Rocket Mortgage’s “decision, policy, plan or common program, practices, protocols, routines, and rules”—none of which are alleged to have arisen, been developed, or enforced from Arizona. (ECF 26, Am. Compl., ¶82.) But any such decisions were made in Michigan. (Ex. A ¶10.) Similarly, any injury to non-Arizona residents — alleged failure to properly pay overtime—occurred outside Arizona. (ECF 26, Am. Compl., ¶¶82, 88, 98; see also Ex. A.)

Bristol-Myers is instructive. There, a group of plaintiffs both resident and non-residents sued Bristol-Myers Squibb (“BMS”) in California based on injuries allegedly caused by a BMS drug. *Bristol-Meyers*, 137 S. Ct. at 1778. The non-resident plaintiffs, however, did not allege that their injuries were connected to BMS’s conduct in California, and BMS moved to dismiss those claims for lack of personal jurisdiction. *Id.*

1 The California Supreme Court held that the court could exercise specific jurisdiction
 2 over the non-residents' claims based on a sliding scale approach. *Id.* It reasoned that
 3 because BMS had extensive contacts with California, a less direct connection was
 4 required. *Id.* at 1779.

5 But the Supreme Court reversed, rejecting this "lesser connection" analysis and
 6 concluding that there was no specific jurisdiction over the non-residents' claims. *Id.* The
 7 Court emphasized that there was no link between the claims and California since the
 8 non-residents did not take or ingest the drug in California, and they were not injured in
 9 California. *Id.* The Court continued that California could not assert specific jurisdiction
 10 over the non-residents' claims simply because it could assert jurisdiction over the
 11 residents' similar claims. *Id.* at 1781. In so doing, the Court reaffirmed that "a
 12 defendant's relationship with a . . . third party, standing alone, is an insufficient basis for
 13 jurisdiction," even when that third party can bring similar claims. *Id.* (alteration in
 14 original) (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)).

15 The holding in *Bristol-Myers* has equal effect here. Here, as in *Bristol-Myers* the
 16 potential non-Arizona plaintiffs "are not [Arizona] residents and do not claim to have
 17 suffered harm in that State," *Bristol-Myers*, 137 S. Ct. at 1782, and "all the conduct
 18 giving rise to the nonresidents' claims occurred elsewhere." *Id.* Further as in *Bristol-
 19 Myers*, "[i]t follows that the [Arizona][] courts cannot claim specific jurisdiction." *Id.*
 20 Plaintiffs cannot conjure specific personal jurisdiction over Rocket Mortgage for non-
 21 Arizona opt-in plaintiffs by virtue of their own claims or allegations that Rocket
 22 Mortgage's employees in other states experienced similar conduct or could bring similar
 23 claims.

24 **D. Courts Applying *Bristol-Myers* in the FLSA Collective Action Context
 25 Have Found There is no Personal Jurisdiction over Defendants with
 26 Respect to the Claims of Opt-In Plaintiffs Who Did Not Work in the
 27 Forum State.**

28 Since *Bristol-Myers*, courts have dismissed putative FLSA collective claims of
 employees who could not establish a connection between their claims and the forum

1 state. This includes various federal appellate courts and district courts in the Ninth
 2 Circuit.² See e.g., *Wilkerson v Walgreens Specialty Pharmacy LLC*, CV-21-01427, 2022
 3 U.S. Dist. LEXIS 195903, at *12-13 (D Ariz. Oct. 27, 2022) (noting at least three Ninth
 4 Circuit district courts and 27 other district courts have held that *Bristol-Myers* applies to
 5 deprive courts of personal jurisdiction over claims by out-of-state plaintiffs
 6 in FLSA actions and finding the reasoning of courts applying *Bristol Myers* more
 7 persuasive and dismissing the holdings of courts that have reached the opposite
 8 result);³ *Gonzalez v. Gov't Emples. Ins. Co.*, No. 2:20-cv-11722-RGK-KS, 2021 U.S.
 9 Dist. LEXIS 201640, at *7-9 (C.D. Cal. Apr. 30, 2021) ("[T]he Court lacks personal
 10 jurisdiction over Rieske's and the out-of-state opt-in Plaintiffs' FLSA claims, and
 11 therefore dismisses those claims[.]"); *Kurtz v. Rcch Trios Health*, No. 4:19-CV-5049-
 12 RMP, 2021 U.S. Dist. LEXIS 249474, at *15-19 (E.D. Wash. Sep. 17, 2021) (the court
 13 lacked personal jurisdiction over defendant over the claims of out-of-state opt-ins
 14 "absent a showing of a link between the alleged conduct of th[e] defendant and
 15 Washington"); *Carlson v. United Nat. Foods, Inc.*, No. C20-5476-JCC, 2021 U.S. Dist.
 16 LEXIS 154079, at *7-11 (W.D. Wash. Aug. 14, 2021) (lack of personal jurisdiction over
 17 defendants over the claims of out-of-state FLSA plaintiffs); *McNutt v. Swift Transp. Co.*
 18 *of Ariz., LLC*, No. C18-5668 BHS, 2020 U.S. Dist. LEXIS 119909, at *25 (W.D. Wash.
 19 July 7, 2020) (court lacks jurisdiction over the claims of employees who did not live or
 20

21 ² The Ninth Circuit has not addressed the applicability of *Bristol-Myers* to FLSA claims.

22 ³ *Wilkerson* concluded that personal jurisdiction was also lacking under Fed. R. Civ. P.
 23 4(k) because the Court was only authorized to reach those claims that an Arizona state
 24 court would have jurisdiction, and the jurisdiction of Arizona courts is limited by
 25 the Due Process Clause, which requires a state court to have personal jurisdiction over
 26 each defendant as to every claim by each plaintiff. 2022 U.S. Dist. LEXIS 195903, at
 27 *25. Rocket Mortgage, as discussed above, is subject to the general jurisdiction by the
 28 courts in the State of Michigan, not Arizona, thereby precluding the Court obtaining
 personal jurisdiction under Fed. R. Civ. P. 4(k)(1) through service of a summons or
 waiver. And because Rocket Mortgage is subject to general jurisdiction in Michigan,
 this Court cannot obtain personal jurisdiction through service of a summons or waiver
 under Fed. R. Civ. P. 4(k)(2).

1 work in the forum state); *Fischer v. Fed. Express Corp.*, 42 F.4th 366, 370 (3d Cir.
 2 2022) (“We join the Sixth and Eighth Circuits and hold that. . . every plaintiff who
 3 seeks to opt in to the suit must demonstrate his or her claim arises out of or relates to the
 4 defendant’s minimum contacts with the forum state.”); *Vallone v. CJS Sol. Grp., LLC*, 9
 5 F.4th 861, 865-66 (8th Cir. 2021) (district court lacked personal jurisdiction over FLSA
 6 claims by non-residents); *Canaday v. Anthem Cos., Inc.*, 9 F.4th 392, 397 (6th Cir. 2021)
 7 (“[t]he principles animating *Bristol-Myers*’s application to mass actions under California
 8 law apply with equal force to FLSA collective actions under federal law”).⁴

9 Courts applying *Bristol-Myers* to FLSA cases have acknowledged the structure of
 10 an FLSA collective action is analogous to the mass tort action at issue in *Bristol-Myers*.
 11 As the Sixth Circuit in *Canaday* aptly stated:

12 The principles animating *Bristol-Myers*’s application to mass
 13 actions under California law apply with equal force to FLSA
 14 collective actions under federal law. As other circuits have
 15 acknowledged, an FLSA collective action is more accurately
 16 described as a kind of mass action, in which aggrieved
 17 workers act as a collective of individual plaintiffs with
 individual cases. A mass action is more akin to an opt-in
 FLSA collective action than it is to a class action. The key
 link is party status. In an FLSA collective action, as in the

18 ⁴ See also *Speight v. Labor Source, LLC*, No. 4:21-CV-112-FL, 2022 U.S. Dist. LEXIS
 19 71218, at *27 (E.D.N.C. Apr. 19, 2022); *Parker v. IAS Logistics DFW, LLC*, No. 20 C
 20 5103, 2021 U.S. Dist. LEXIS 171095, at *8 (N.D. Ill. Sep. 9, 2021); *Ruffing v. Wipro
 Ltd.*, 529 F. Supp. 3d 359, 368-70 (E.D. Pa. 2021); *Bone v. XTO Energy, Inc.*, 561 F.
 Supp. 3d 1132, 1137 (D.N.M. 2021); *Butler v. Adient US, LLC*, No. 3:20 CV 2365, 2021
 U.S. Dist. LEXIS 126886, at *8 (N.D. Ohio July 8, 2021); *Weirbach v. Cellular
 Connect, LLC*, 478 F. Supp. 3d 544, 546-52 (E.D. Pa. 2020); *Hodapp v. Regions Bank*,
 No. 4:18CV1389 HEA, 2020 U.S. Dist. LEXIS 238552, at *4 (E.D. Mo. Dec. 18, 2020);
Fischer v. Fed. Express Corp., 509 F. Supp. 3d 275, 284-91 (E.D. Pa. 2020); *Szewczyzk
 v. UPS*, No. 19-1109, 2019 U.S. Dist. LEXIS 182998, at *24 (E.D. Pa. Oct. 22, 2019);
Wiggins v. Jedson Eng’g, Inc., No. 1:19-CV-00354-DCLC-CHS, 2020 U.S. Dist. LEXIS
 225772, at *15 (E.D. Tenn. Aug. 27, 2020); *Hutt v. Greenix Pest Control, LLC*, No.
 2:20-cv-1108, 2020 U.S. Dist. LEXIS 220748, at *24 (S.D. Ohio Nov. 24, 2020);
Maclin v. Reliable Reports of Tex., Inc., 314 F. Supp. 3d 845, 851 (N.D. Ohio 2018);
Rafferty v. Denny’s, Inc., No. 5:18-cv-2409, 2019 U.S. Dist. LEXIS 112727, at *15
 (N.D. Ohio July 8, 2019); *Turner v. Utiliquest*, No. 3:18-cv-00294, 2019 U.S. Dist.
 LEXIS 224202, at *7 (M.D. Tenn. July 16, 2019).

1 mass action under California law, each opt-in plaintiff
 2 becomes a real party in interest, who must meet her burden
 3 for obtaining relief and satisfy the other requirements of party
 4 status.

5 *Canaday*, 9 F.4th at 397 (citations and quotations omitted, emphasis added); *see also*
 6 *Fischer*, 42 F.4th at 376-77 (“[A]n opt-in plaintiff under § 216(b) becomes a ‘party
 7 plaintiff’ . . . [and therefore has] the same status in relation to the claims of the lawsuit as
 8 do the named plaintiffs.”). One of the requirements of party status is establishing the
 9 existence of personal jurisdiction. *Id.* at 387 (“[T]he opt-in plaintiffs in FLSA collective
 10 actions must satisfy the personal jurisdiction requirements of the Fourteenth Amendment
 11 to join the suit.”); *Carlson*, 2021 U.S. Dist. LEXIS 154079, at *9 (“There is ‘no doubt
 12 that every plaintiff who opts into a collective action has party status,’ . . . and therefore
 13 must establish personal jurisdiction.”). In both mass actions and FLSA collective
 14 actions, “[t]he mere fact that [some] plaintiffs were . . . [injured]. . . in [the forum
 15 state]—and allegedly sustained the same injuries as did the nonresidents—does not
 16 allow the State to assert specific jurisdiction over the nonresidents’ claims.” *Bristol*
 17 *Myers*, 137 S. Ct. at 1781. “What is needed—and what is missing here—is a connection
 18 between the forum and the specific claims at issue.” *Id.* Thus, this Court lacks personal
 19 jurisdiction over the claims of any opt-in plaintiff who did not work in Arizona.⁵

20 ⁵ Plaintiffs may rely on *Waters v. Day & Zimmermann NPS, Inc.*, 23 F.4th 84, 86 (1st
 21 Cir. 2022) or district court cases applying similar rationale, to conclude that *Bristol-*
Myers’s analysis holding does not apply to FLSA collective actions. But they conflict
 22 with three federal courts of appeals, which have already held that “[t]he principles
 23 animating *Bristol-Myers*’s application to mass actions apply with equal force to FLSA
 24 collective actions under federal law.” *Canaday*, 9 F.4th at 397; *Vallone*, 9 F.4th at 866;
 25 *Fischer*, 2022 U.S. App. LEXIS 20536, at *3. And *Waters* conflicts with the growing
 26 corpus of decisions in this Circuit, and others, applying *Bristol-Myers* to FLSA
 27 collective actions. This Court should adopt the reasoning of the Sixth, Eighth, and Third
 28 Circuits and conclude that *Bristol-Myers*’s requires specific personal jurisdiction over a
 defendant as to claims of opt-in FLSA collective Plaintiffs. *But see Cooley v. Air*
Methods Corp., No. CV-19-00850-PHX-DLR, 2020 U.S. Dist. Lexis 177139, *8-9 (D.
 Arizona, Sept. 25, 2022) (collecting cases) (stating it would decline to apply *Bristol-*
Myers to FLSA collective claims).

1 Because the Court lacks personal jurisdiction over the claims of any putative opt-
 2 in plaintiff who did not allegedly work for Rocket Mortgage in Arizona, such claims
 3 should be dismissed under Rule 12(b)(2). Further, Plaintiffs' claims on behalf of out-of-
 4 state claimants must be dismissed with prejudice because Plaintiffs cannot plead any fact
 5 that would subject Rocket Mortgage to general jurisdiction in Arizona. *Van Dusen v City*
 6 *of Oakland*, 678 F App'x 582, 584 (9th Cir. 2017) (The district court did not abuse its
 7 discretion by denying leave to amend because any further amendment would have been
 8 futile) (citing *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989)).
 9 Thus, this Court should dismiss Plaintiffs' claims on behalf of non-Arizona Plaintiffs
 10 without leave to amend.

11 **II. IF THE COURT DOES NOT DISMISS THE CLAIMS OF NON-ARIZONA**
 12 **DEFENDANTS, THE COURT SHOULD TRANSFER THIS CASE TO THE**
 13 **EASTERN DISTRICT OF MICHIGAN UNDER §1631 OR §1404**

14 A. *Transfer Under Section 1631 or Dismissal under 12(b)(2) is Appropriate.*
 15 If a district court determines that it lacks personal jurisdiction over a defendant, it
 16 must dismiss the case or transfer it to any district in which it could have been initially
 17 brought. *See Harrell v. Kepreos*, 175 F. App'x 793, 794 (9th Cir. 2006) (affirming
 18 district court's decision that it lacked personal jurisdiction over the defendants and
 19 remanding with instructions to transfer the case pursuant to 28 U.S.C. § 1631). "For the
 20 Court to direct a transfer under § 1631, three conditions must be met: (1) the transferee
 21 court would have been able to exercise its jurisdiction on the date the action was
 22 misfiled; (2) the transferor court lacks jurisdiction; and (3) the transfer serves the interest
 23 of justice." *Chorost v. Rotor Am. Inc.*, No. CV-21-00235-TUC-RCC (LCK), 2022 U.S.
 24 Dist. LEXIS 218451, at *29 (D. Ariz. Aug. 8, 2022) (internal quotations and citation
 omitted).

25 A case may be transferred only to a district where it originally "could have been
 26 brought;" meaning the transferee court must have subject matter jurisdiction, proper
 27 venue, and the defendant must be subject to personal jurisdiction. *Id.*, citing *Helperich*
 28 *Pat. Licensing, LLC v. Suns Legacy Partners, LLC*, No. CV-11-2304-PHX-NVW, 2013

1 WL 442296, at *1 (D. Ariz. Feb. 5, 2013). “Normally transfer will be in the interest of
 2 justice because normally dismissal of an action that could be brought elsewhere is time-
 3 consuming and justice-defeating.” *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir.
 4 1990) (internal quotations and citation omitted); *Amity Rubberized Pen Co. v. Mkt.*
 5 *Quest Grp., Inc.*, 793 F.3d 991, 996 (9th Cir. 2015) (same).

6 Here, transfer to the Eastern District of Michigan is warranted under Section
 7 1631. First, Plaintiffs cannot plausibly dispute that their lawsuit could have been filed in
 8 the Eastern District of Michigan. Indeed, Plaintiffs’ claims depend on the alleged
 9 violation of a federal statute—the FLSA—so the Eastern District of Michigan has
 10 federal question subject matter jurisdiction over their claims. (See ECF 26, Am. Compl.
 11 ¶4.) As for personal jurisdiction (and as discussed above), Rocket Mortgage’s
 12 headquarters and principal place of business is in Michigan. Thus, Michigan has general
 13 personal jurisdiction over Plaintiffs’ individual claims and over the claims of the non-
 14 Arizona opt-in plaintiffs and is subject to service of a summons under Fed. R. Civ. P.
 15 12(k). Venue is also proper in the Eastern District of Michigan because Rocket
 16 Mortgage is headquartered in Detroit, Michigan, which is in that District. See 28 U.S.C.
 17 § 1391. And one of the named Plaintiffs is a Michigan resident who worked for Rocket
 18 Mortgage in Michigan, not Arizona. (Ex. A, ¶18).

19 Second, the interests of justice favor transfer. Transferring saves time and
 20 resources and maintains case continuity by simply moving this case to the proper
 21 jurisdiction—one that has the authority to hear the claims of the non-Arizona opt-in
 22 plaintiffs. Dismissal would only delay the proceedings and require any non-Arizona opt-
 23 in plaintiffs to file their claims elsewhere, with no guarantee that they re-file in the
 24 Eastern District of Michigan. Dismissal increases the likelihood of the filing a series of
 25 nearly identical lawsuits around the country, exponentially increasing the costs of
 26 litigation, and creating a high likelihood of piecemeal litigation and inconsistent rulings.
 27 Thus, transfer is appropriate under §1631.

28

1 ***B. Transfer is Also Appropriate under Section 1404.***

2 Even if this Court finds that it has personal jurisdiction over the claims of the
 3 non-Arizona opt-in plaintiffs (which it should not), it should still transfer this case to the
 4 Eastern District of Michigan under 28 U.S.C. § 1404(a). A district court may transfer a
 5 civil action to any other district or division where the case may have originally been
 6 brought “for the convenience of parties and witnesses” and “in the interest of justice.” 28
 7 U.S.C. § 1404(a). “The purpose of [§ 1404(a)] is to prevent the waste of time, energy
 8 and money and to protect litigants, witnesses and the public against unnecessary
 9 inconvenience and expense.” *McCormick v. Franklin Cty. Court of Common Pleas*
 10 *Domestic Div.*, No. CV-19-02941-PHX-DJH, 2019 U.S. Dist. LEXIS 128441, at *6 (D.
 11 Ariz. July 31, 2019) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 616, 84 S. Ct. 805,
 12 11 L. Ed. 2d 945 (1964)). Factors courts may consider in deciding to transfer venue
 13 include:

14 (1) the state that is most familiar with the governing law, (2) the plaintiff's choice of forum, (3) the respective parties' contacts with the forum, (4) the contacts relating to the plaintiff's cause of action in the chosen forum, (5) the differences in the costs of litigation in the two forums, (6) the availability of compulsory process to compel attendance of unwilling, non-party witnesses, and (7) the ease of access to sources of proof.

15 *McCormick*, 2019 U.S. Dist. LEXIS 128441, at *6 (citing *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000)).

16 Transfer to the Eastern District of Michigan is appropriate. This case could have
 17 been initially brought in the Eastern District of Michigan. It has subject matter jurisdiction over Plaintiffs' claims and personal jurisdiction over Rocket Mortgage as to those claims. Moreover, venue is proper. And the factors identified above, on balance, strongly favor transferring the case. The first factor does not weigh heavily in favor of either party as both the District of Arizona and Eastern District of Michigan are familiar with the FLSA. But as for the second factor, Plaintiffs' choice to sue Rocket Mortgage in Arizona should be given only minimal weight because they seek to represent other

1 potential plaintiffs from around the country in a collective action. *Lou v. Belzberg*, 834
 2 F.2d 730, 739 (9th Cir. 1987) (“Although great weight is generally accorded plaintiff’s
 3 choice of forum, when an individual brings a derivative suit or represents a class, the
 4 named plaintiff’s choice of forum is given less weight.”); *Cowley v. Prudential Sec.*, No.
 5 1:19-cv-01472-, 2020 U.S. Dist. LEXIS 233628, at *23 (E.D. Cal. Dec. 10, 2020)
 6 (concluding “that Plaintiff’s choice of forum is entitled to little weight, and it is not
 7 entitled to the deference it would receive were it not proceeding as an FLSA collective
 8 action”). Plaintiffs also allege that Rocket Mortgage maintained a company-wide
 9 unlawful policy and seek to bring a nationwide putative collective action, but few facts
 10 about Plaintiffs proposed collective are alleged to have occurred in Arizona, particularly
 11 when compared to Rocket Mortgage’s operations in the Eastern District of Michigan,
 12 where it is headquartered. (See Ex. A, ¶¶ 7-13.) Indeed, less than 11.8% of Rocket
 13 Mortgage workforce is in Arizona. By contrast, about 68% of Rocket Mortgage’s
 14 workforce is in Michigan. (*Id.*, ¶¶14-15.) Moreover, more than 82% of the putative
 15 collective worked for Rocket Mortgage outside of Arizona, including one of the named
 16 Plaintiffs. *Id.*, ¶¶15,17-20. Plaintiffs do not allege that Rocket Mortgage developed any
 17 nationwide policies or processes related to this lawsuit in Arizona or enforced any such
 18 policies from Arizona. In short, the primary dispute arises out of Michigan and the
 19 various other states in which Rocket Mortgage operates—with only a limited part arising
 20 out of Arizona; further justifying giving Plaintiffs’ choice of forum only minimal
 21 consideration. See *Lou*, 834 F.2d at 739 (“If the operative facts have not occurred within
 22 the forum and the forum has no interest in the parties or subject matter, [plaintiff’s]
 23 choice is entitled to only minimal consideration.”); *Cung Le v. Zuffa, LLC*, 108 F. Supp.
 24 3d 768, 779 (N.D. Cal. 2015) (plaintiffs’ choice of forum afforded less deference
 25 because the “[p]laintiffs filed. . . purported class actions in a district where very few of
 26 the operative facts occurred. . . [and thus] th[e] forum has little local interest in
 27 adjudicating [p]laintiffs’ claims” when compared to the district where the “[d]efendant is
 28 headquartered. . . and conducts a substantial amount of business[.]”).

1 Factors three through seven all significantly favor transfer. Michigan is not only
 2 where Rocket Mortgage is headquartered and the state with the most potential plaintiffs
 3 reside, but it is also centrally located and where most of the documents and witnesses
 4 with information about Rocket Mortgage's employment policies and practices will be
 5 found. By contrast, Arizona has few putative collective action members, is located on
 6 the opposite side of the country from employees working on the east coast, and is not
 7 where Rocket Mortgage's company witnesses, or documents are located. Thus, the
 8 Eastern District of Michigan is a far more convenient venue. See, e.g., *Baird*, 2022 U.S.
 9 Dist. LEXIS 42293, at *14 ("[B]ecause neither the non-Plaintiffs nor Defendants are
 10 based in this district or even in California, access to the evidence would be easier in the
 11 Southern District of Texas because that is where [the defendant] is based. Accordingly,
 12 this factor weighs in favor of transfer."); *Cowley*, 2020 U.S. Dist. LEXIS 233628, at
 13 *13-17 (convenience of the parties and witnesses favor transfer to the Eastern District of
 14 Michigan because a majority of the potential witnesses are in Michigan and "there is no
 15 real dispute that the majority of the putative FLSA class members reside and work in
 16 Michigan," which suggests that "Michigan would be a more convenient forum for
 17 them"). Accordingly, if this Court declines to dismiss this case as to non-Arizona
 18 putative collective members, it should transfer the case to the Eastern District of
 19 Michigan.

20 CONCLUSION

21 This Court should dismiss the claims of non-Arizona putative class members for
 22 lack of personal jurisdiction. If the Court declines to do so, it should transfer this case to
 23 the Eastern District of Michigan under either 28 U.S.C. §1631 or §1404.

24 LRCiv 12.1(c) CERTIFICATION

25 The undersigned counsel certifies that, prior to filing of this Motion, counsel for
 26 Plaintiffs and Defendant discussed the deficiencies by telephone conference and email.
 27 The parties were unable to agree, and Plaintiffs declined to amend the complaint to
 28 address the issues raised in this Motion.

1 DATED March 3, 2023
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JACKSON LEWIS P.C.

By: /s/ J. Greg Coulter
J. Greg Coulter
Allan S. Rubin
Attorney for Defendant
Rocket Mortgage, LLC

